Supreme Court, U.S.
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NO. 93-2081

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

LARS M. REIMANN and WOODSON RENENT LABORATORIES, INC., individually and on behalf of a class of persons and entities similarly situated,
PETITIONERS

v.

JOE HUDDLESTON, in his capacity as Commissioner of Revenue for the State of Tennessee

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION

PETITIONERS' SUPPLEMENTAL BRIEF

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Attorneys for Petitioners

Lars M. Reimann and Woodson Tenent Laboratories, Inc. ("Petitioners"), pursuant to Rule 15.7 of the Rules of this Court, file this Supplemental Brief to call to the Court's attention developments in cases pending in Tennessee courts addressing the same tax scheme at issue in this cause which occurred after Petitioners filed their Petition for a Writ of Certiorari.

There have been recent proceedings in two other cases pending in the Tennessee courts concerning the same tax scheme that is at issue in this case. In the case of Bill Gatton Chevrolet and Frank Brasher Buick v. Huddleston, Davidson County Chancery No. 93-3846-III, plaintiffs are car dealers that brought a class action complaint to recover taxes collected on extended warranty contracts. The Commissioner moved to dismiss the complaint, arguing that a class action is not proper in tax cases. The Davidson County Chancery Court granted defendant's motion to dismiss by order dated August 15, 1994, holding that the plaintiff car dealers could not bring a class action to recover the wrongfully collected taxes. A copy of the Order dismissing that case is attached in the Appendix at A-1. As a result of this dismissal, the parties that the Tennessee Court of Appeals in this case held are the proper taxpayers to seek a refund of the sales tax collected on extended warranty contracts, namely the car dealers, have been denied a meaningful opportunity to obtain a tax refund also.

In addition, the Shelby County Chancery Court has declared unconstitutional the thirty-day statute of limitations governing refunds of sales tax collected on extended warranty contracts in Lewis Ford, Inc. v.

Huddleston, Shelby County Chancery No. 103501-III. A copy of the Order and Judgment is attached in the Appendix at A-5. The Chancery Court held that the reduction of the normal three year statute of limitations to a mere thirty days was unconstitutional under due process principles. This decision of the Shelby County Chancery Court supports Petitioners' contention in this cause that the State of Tennessee tainted the entire refund process by reducing the applicable statute of limitations to thirty days without notice, thereby dissuading car dealers and/or consumers who are entitled to a refund of the unlawfully collected tax from attempting to collect one.

On July 28, 1994, Charles W. Burson, Attorney General and Reporter for the State of Tennessee, in Response to the Petition for a Writ of Certiorari, filed a letter with the Clerk of this Court indicating that the Petition should be denied based upon "the reasons set forth in the decisions and/or orders" of the Tennessee courts. None of the decisions in General Burson's letter addressed the application of McKesson to this tax scheme.

Petitioners urge this Court to grant their Petition for a Writ of Certiorari so that this Court may review the actions of the State of Tennessee in regard to refunds of the illegally collected sales tax because Tennessee's refund procedure fails to satisfy this Court's mandate in McKesson and fails to satisfy fourteenth amendment due process considerations.

Respectfully submitted,

George T. Lewis, III
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Attorneys for Petitioners

APPENDIX

IN THE CHANCERY COURT OF
DAVIDSON COUNTY, TENNESSEE

BILL GATTON HONDA and FRANK BRASHER BUICK, PONTIAC, GMC, INC., individually and on behalf of a class of persons and entities similarly situated,	)	
Plaintiffs,	)	
v.	)	Case No. 93-3846-III
JOE B. HUDDLESTON, in his capacity as Commissioner of Revenue for the State of Tennessee,	)	
Defendant.	)	

ORDER AND JUDGMENT

This cause came before this Court for hearing on June 24, 1994, upon the Defendant Commissioner of Revenue's Motion to Dismiss the Complaint filed by the Plaintiffs Bill Gatton Honda and Frank Brasher Buick, Pontiac, GMC, Inc. individually and on behalf of a class of persons and entities similarly situated. The Defendant seeks to dismiss the Plaintiff's Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted pursuant to Tennessee Rule of Civil Procedure 12.02(1) and (6). Upon consideration of this motion, the briefs of the parties, the argument of the parties at the hearing held on June 24,

1994, and the entire record, and for the reasons stated in open court at the conclusion of the parties' argument at the hearing on June 24, 1994, this Court hereby ORDERS, ADJUDGES and DECREES that the Defendant's Motion to Dismiss the Complaint is hereby GRANTED and this Complaint is hereby DISMISSED. The Court further ORDERS that (1) all costs are taxed to the Plaintiffs for which judgment may issue, (2) pursuant to Tennessee Rule of Civil Procedure 54.02, this Court determines that this Order and Judgment adjudicates all of the claims of the Plaintiffs in this action, that there is no just reason for delay, and that final judgment as to the claims of the Plaintiffs shall immediately be entered and (3) the Defendant shall file any application for attorney's fees and litigation expenses under T.C.A. § 67-1-1803(d) with the Court within forty-five (45) days after the entry of this Order and Judgment or the final disposition of all appeals in this case, whichever event occurs later, and any objection by the Plaintiffs to this application must be filed within thirty (30) days after the filing of Defendant's application.

IT IS THEREFORE, SO ORDERED.

Entered this 15th day of August, 1994.

/s/_____
Honorable Robert S. Brandt
CHANCELLOR

SUBMITTED FOR ENTRY BY:

CHARLES W. BURSON
Attorney General and Reporter

/s/_____
WILLIAM E. YOUNG (#9711)
Senior Counsel
Attorney General's Office
Tax Division, Suite 2121
404 James Robertson Parkway
Nashville, Tennessee 37243-0489
(615) 741-1902

Counsel for the Defendant
Commissioner of Revenue

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing proposed Judgment and Order has been forwarded by U.S. Mail, postage prepaid, to:

John R. Gregory, Esq.
George T. Lewis, Esq.
Sheila Jordan Cunningham, Esq.
HEISKELL, DONELSON, BEARMAN, ADAMS, WILLIAMS & CALDWELL
Counsel for the Plaintiffs
165 Madison Avenue, Suite 2000
Memphis, Tennessee 38103

on this the 9th day of August, 1994.

/s/
WILLIAM E. YOUNG
Senior Counsel

IN THE CHANCERY COURT OF
SHELBY COUNTY, TENNESSEE

LEWIS FORD, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 103501-III
	)	
JOE B. HUDDLESTON,	)	
Commissioner of Revenue,	)	
State of Tennessee,	)	
	)	
Defendant.	)	
	)	

ORDER AND JUDGMENT

This cause came on for hearing on July 15, 1994 based upon the parties' Summary Judgment motions. The only issue presented to the Court was one of law concerning the validity of the statute of limitations established in Public Chapter 80. Upon consideration of the Cross-Motions, the briefs of the parties, the arguments of counsel, and the entire record in this cause, all from which it appears to the Court that Plaintiff's Motion is well-taken and should be granted and Defendant's Motion for Summary Judgment should be denied.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Court finds that 1991 Public Acts, Chapter 80, Section 3, is unconstitutional, that Plaintiff's Motion for Summary Judgment in this cause is GRANTED and that Defendant's Motion for Summary Judgment is DENIED. Pursuant to Tennessee Rule of Civil Procedure 54.02, this Court determines that this

Order and Judgment adjudicates all of the claims of the parties in this cause, that there is no just reason for delay, and that final judgment as to Plaintiff's entitlement to a refund of taxes is hereby entered;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the issue of attorney's fees and final disbursement of any funds which Plaintiff is unable to refund to its customers despite good faith efforts is reserved by this Court for a determination at a later date should such determination be required. Costs are assessed against Defendant, for which execution may issue if necessary.

/s/
CHANCELLOR D.J. ALISSANDRATOS

DATE APPROVED: 7-27-94

/s/
ELIZABETH E. CHANCE
Attorney for Plaintiff

/s/
WILLIAM E. YOUNG
Attorney for Defendant